

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BERNARD M.,
Plaintiff,

v.

KILOLO KIJAKAZI,
Defendant.

Case No. [23-cv-02911-PHK](#)

ORDER TO SHOW CAUSE

This is a social security appeal brought by Plaintiff Bernard M.¹ (“Plaintiff”) against the Acting Commissioner of the Social Security Administration, Defendant Kilolo Kijakazi (“Commissioner”), pursuant to 42 U.S.C. § 405(g). [Dkt. 1]. The Parties have consented to proceed before a United States magistrate judge for all purposes, including the entry of a final judgment under 28 U.S.C. § 636(c). *See* Dkts. 7-8. The matter is presently before the Court *sua sponte* regarding Plaintiff’s failure to comply with the Court’s procedural Order and deadline for filing an opening brief.

¹ In actions involving requested review of a decision by the Commissioner of the Social Security Administration, the Court generally uses the first name and initial of last name (or just the initials) of the plaintiff in the Court’s public Orders out of an abundance of caution and regard for the plaintiff’s privacy.

Plaintiff, who is *pro se*, commenced this action on June 13, 2023, filing both a form social security Complaint and an application to proceed *in forma pauperis* (“IFP”). [Dkts. 1-2]. On June 15, 2023, the Clerk issued the Court’s standard procedural Order for social security appeals, setting forth the mandatory scheduling deadlines governing this case. [Dkt. 4]. Among other things, the procedural Order advised that Plaintiff “must file and serve on the Commissioner a brief for the requested relief within 30 days after the answer is filed.” *Id.*

On July 7, 2023, the Court granted Plaintiff’s IFP application, and on July 31, 2023, the Court authorized service of the summons and Complaint on the Commissioner. [Dkts. 6, 10]. On August 10, 2023, the Commissioner answered the Complaint by filing a certified copy of the administrative record. [Dkt. 11]. Pursuant to the procedural Order entered in this case, Plaintiff’s opening brief was due September 11, 2023. *See* Dkt. 4; *see also* Fed. R. Civ. P. 6(a). To date, Plaintiff has not filed his opening brief. Nor has Plaintiff sought an extension of the deadline to do so from this Court.

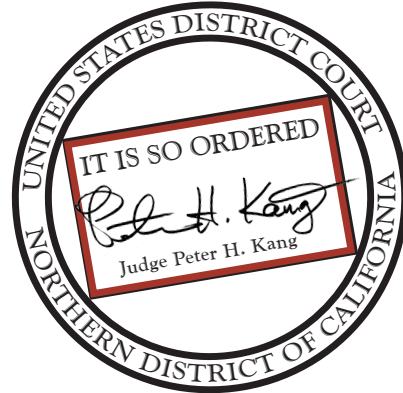
Federal Rule of Civil Procedure 41(b) permits the involuntary dismissal of an action if a plaintiff fails to prosecute the case or fails to comply with court Orders. *See Hells Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that a court may *sua sponte* dismiss an action pursuant to Rule 41(b)); *see also Link v. Wabash R. Co.*, 370 U.S. 626, 629 (1962) (“The authority of a federal trial court to dismiss a plaintiff’s action with prejudice because of his failure to prosecute cannot seriously be doubted.”); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (“District courts have the inherent power to control their dockets and, ‘[i]n the exercise of that power they may impose sanctions, including, where appropriate, . . . dismissal of a case.’”). The Court hereby provides **NOTICE** that Plaintiff’s failure to prosecute this action and comply with the procedural Order deadline is grounds for the dismissal of this case, in its entirety, in the absence of any justification for that failure.

At this time, the Court will not exercise its authority to dismiss this case but rather **ORDERS** Plaintiff to show cause why dismissal is not appropriate. Therefore, by this Order, the Court **INSTRUCTS** Plaintiff either to explain his failure to file his opening brief by the deadline or, in the alternative, to file his opening brief promptly.

Accordingly, **IT IS HEREBY ORDERED THAT:**

1. On or before **November 27, 2023**, Plaintiff shall file a response with the Court which shows cause in writing as to why the Court should not dismiss this case due to Plaintiff's failure to comply with the procedural Order's deadline for filing his opening brief. Instead of a response which shows cause, Plaintiff may simply file his opening brief on or before **November 27, 2023**.
2. The Court hereby provides Plaintiff **NOTICE** that failure to comply with this Order to Show Cause, as directed herein, may result in further action up to and including dismissal of this action, in its entirety, pursuant to Federal Rule of Civil Procedure 41(b).

Dated: November 8, 2023



PETER H. KANG
United States Magistrate Judge